

Statement of
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before the
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives

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Summary of Testimony
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Comprehensive Electricity Restructuring Legislation – The Administration supports congressional enactment of comprehensive electricity restructuring legislation. Electricity restructuring and retail competition, as outlined in the Administration's bill, will: (1) lower electric rates, (2) make American businesses more competitive, (3) spur the innovation of new products and services and (4) reduce the emissions of traditional air pollutants and greenhouse gases.

Need for Federal Action – Federal legislation is essential to (1) provide for competitive, efficient and reliable interstate electric markets; (2) remove the Federal statutory impediments to state and local retail competition programs; (3) allow for the regions served by the Federal utilities to benefit from competition; and (4) preserve and enhance environmental and other public benefits.

Comprehensive Electricity Competition Act (CECA) – CECA would:

- remove the Federal statutory impediments to retail competition;
- encourage competition but allow states and non-regulated municipal and cooperative utilities to opt-out;
- promote competitive interstate generation and transmission markets;
- protect small consumers;
- protect and enhance the reliability of the transmission grid;
- promote renewable energy;
- provide sufficient funding for state public benefits programs;
- benefit rural and remote areas;
- enable competition to thrive in the regions served by TVA and the PMAs;
- remove barriers to the use of distributed power and combined heat and power technologies; and
- clarify the tax-code treatment of debt issued by municipal utilities.

Introduction

Mr. Chairman, thank you for inviting me to testify today on the Clinton Administration's Comprehensive Electricity Competition Act (CECA).¹ This legislation lays out our vision for the role the Federal government should play in the transition to retail competition.

The Clinton Administration supports electric restructuring because we believe that retail competition, as provided for in the Administration bill, will be good for consumers, good for the economy and good for the environment. Companies that had no incentive to offer lower prices, better service, or new products will now compete to earn your business. Consumers will save money on their electric bills. Lower electric rates will also make businesses more competitive by lowering their costs of production. By promoting energy conservation and the use of cleaner and more efficient technologies, greenhouse gas emissions will be reduced.

The rules and regulations that, since the New Deal, defined and directed the delivery of electricity to consumers are disappearing. Twenty-two states have already approved restructuring proposals to allow consumers to choose among competing power suppliers. Almost every other state has the matter under active consideration. What once appeared to be an experiment by a few high cost states, is now a trend that is sweeping the nation.

States are, and should be, leading the way, but Federal action is necessary for state restructuring programs to achieve their maximum potential. Electrons do not respect state

¹The Administration transmitted CECA to Congress in two separate parts. The first part, which was introduced by Congressmen Bliley and Dingell (upon request) as H.R. 1828 on May 17, includes all of the non-tax-related provisions in the Administration's proposal. The portion of the legislation which would amend the tax code has not yet been introduced in the House of Representatives. Both parts of the bill were introduced in the Senate by Senators Murkowski and Bingaman (upon request) -- S. 1047 and S. 1048 -- on May 13.

borders. The fact is that electricity markets are becoming increasingly regional and multi-regional. Actions in one state can and do affect consumers in another.

States alone can't ensure that regional power and transmission markets are efficient and competitive. And they can't provide for the continued reliability of the interstate bulk power grid. Moreover, states can't remove the Federal statutory impediments to competition and enable competition to thrive in the regions served by Federal utilities.

The fact is that retail competition can't and won't reach its full potential without comprehensive Federal electricity restructuring legislation. Neither state nor Federal regulators have the necessary tools to ensure that electricity markets operate as efficiently as possible without complementary action by Congress.

Significant uncertainty remains. Utilities have deferred making important decisions on new generation and transmission resources because of the uncertainties over the rules of the road they will be operating under. As a result, generating capacity reserve margins have tightened. Last summer, we witnessed the impact of the delay in decision making when a combination of hot weather, severe storms and a shortage of generating capacity led to significant power shortages that caused large price spikes in the Midwest. Just last week, during a brief heat wave, power supplies in New England grew very tight. While, fortunately, major power outages were avoided, the fact is that insufficient generation and transmission capacity was a contributing factor. Because the New England states are proceeding with restructuring programs, major capacity additions are being planned for that region and capacity shortfalls should be avoided in the future. Unfortunately this is not the case everywhere. Utilities and other market participants need to know what rules and regulations they will be operating under in order to respond to

generation and transmission capacity shortages. Legislation laying out the Federal regulatory framework for restructuring would go a long way towards eliminating the uncertainties that exist.

Comprehensive Electricity Competition Act

On April 15, I transmitted the Administration's Comprehensive Electricity Competition Act to Congress. This legislation contains the provisions which we believe are necessary to maximize the benefits associated with state and local retail competition programs. The Department of Energy's Office of Policy recently released its Supporting Analysis for the Administration's proposed legislation, copies of which have been made available to the Committee. This analysis estimated the economic and environmental benefits associated with retail competition and the Administration's legislation and concluded that (1) annual savings of at least \$20 billion per year would be achieved; (2) residential consumers in all states would benefit from retail competition and (3) greenhouse gas emissions would be reduced by an estimated 40 to 60 million metric tons annually by 2010.

Mr. Chairman, I would like to take a few minutes to outline many of the key provisions included in the Administration's bill.

Removing Statutory Impediments to Competition

The existing Federal regulatory framework for the electric power industry was established with the enactment of the Federal Power Act and the Public Utility Holding Company Act (PUHCA). This framework does not readily accommodate state initiatives to institute competition among retail suppliers. In fact, certain Federal statutes may prove unworkable in restructured markets.

CECA includes several provisions designed to remove these impediments. For instance, the Federal Energy Regulatory Commission (FERC) would be provided with clear authority to enable retail transmission access to complete an authorized retail sale. In addition, the bill would repeal PUHCA, but provide for increased access to holding company books and records for state regulators and FERC.

State and Local Flexibility

As I mentioned earlier, the Administration supports restructuring and retail competition, as provided for in the Administration's bill, because it is good for consumers, the economy and the environment. While nearly half of the states have already adopted retail competition programs, we believe that all States and non-regulated municipal and cooperative utilities should be encouraged to embrace the benefits of retail competition. Our legislation establishes a target date of January 1, 2003, by which all consumers would be able to purchase power from the supplier of their choice. However, individual states and non-regulated utilities could opt-out from this requirement if they find, on the basis of a public proceeding, that consumers would be better served by an alternative policy or the current monopoly system.

This approach, while establishing a preference for competition, recognizes that individual states and non-regulated utilities may face unique challenges and should have some discretion. Those states and unregulated utilities that have already implemented competitive programs would be grandfathered-in by filing a notice with FERC.

Promoting Competitive Interstate Markets

Enacting a statute declaring that “there shall be competition” is not enough. Eliminating monopoly franchises and cost-of-service regulation still leaves in place the traditional vertically-integrated structure not suited for efficient and competitive markets.

Access to transmission facilities which remain a monopoly function must be available to all potential suppliers on a non-discriminatory basis. FERC’s Order Nos. 888 and 889 took critical steps in opening electricity markets to competition by requiring jurisdictional utilities to file open access transmission tariffs. However, effective competition requires that electricity suppliers have access to all necessary transmission facilities, regardless of ownership. The Administration’s bill would subject the transmission facilities of all utilities, including those owned by Federal, municipal and cooperative utilities, to FERC jurisdiction to provide for greater and more efficient competition. CECA would also codify FERC’s authority to impose open access requirements on jurisdictional utilities.

While open access reduces a transmission owner’s ability to discriminate in the provision of transmission service, the separation of the operation and control of transmission facilities from generation through participation in an independent Regional System Operator (RSO) structure would greatly reduce the risk that operation of the transmission system could be distorted to favor some generators or customers over others. An efficiently dispatched and properly priced bulk-power system might not develop absent the establishment of independent regional system operators. CECA would provide FERC with the authority to require that a transmission owner relinquish operational control over transmission facilities to an independent RSO.

In certain instances utility companies may have the ability to exercise market power by virtue of high concentrations of ownership of generation facilities in a particular region. The Administration's bill would also provide FERC with the authority to remedy concentrations of market power in wholesale power markets. In addition, FERC would be able to remedy retail market power problems upon the request of a state implementing retail competition.

Consumer Protection

While we expect retail competition to benefit all classes of consumers, we are mindful that small consumers must be adequately protected. The Administration's legislation contains a variety of provisions designed to ensure that consumers have adequate purchasing power and access to information and that electricity suppliers don't engage in fraudulent practices.

One way that consumers can increase their purchasing power and access to low cost electricity in a competitive marketplace is through aggregation. Aggregation is the process whereby electric consumers join their loads in order to leverage buying power. While most State competition programs will encourage aggregation, it is essential that State and Federal laws not impose barriers for an entity to participate in aggregation. The Administration's bill would make it clear that no State or Federal law can be applied to impede aggregation in a competitive market.

Consumers will also need reliable information so that they can compare the products and prices offered by electricity suppliers and make informed choices. The Administration's bill would enable DOE to require all electricity suppliers to disclose in a uniform, easy to read "label", basic information on the price, terms and conditions of service, the type of generation source and generation emissions characteristics.

Certain service providers in the competitive long distance and emerging competitive local telephone markets have engaged in fraudulent practices, such as slamming and cramming². There is a concern that slamming and cramming could also occur in a competitive retail electric market. As a result, CECA would empower the Federal Trade Commission to establish and enforce anti-slamming and anti-cramming provisions against unscrupulous power providers and marketers.

Reliability

The electric utility industry, through a tradition of voluntary self-regulation and cooperation, has performed admirably in maintaining reliability of the transmission grid over the past thirty years. However, in a highly competitive market environment, a different mix of incentives will be at work. There will be pressures to cut costs and to drive the power grids harder, to squeeze as much economic value out of them as possible. Moreover, since many transmission owners will also be in the power generation and marketing business, there may also be an incentive to exercise control over strategic parts of the transmission system for economic purposes, perhaps using reliability concerns as a pretext.

CECA implements the recommendations of the DOE Task Force on Electric System Reliability, chaired by Phil Sharp, and adopts almost all of the legislative proposal offered by the North American Electric Reliability Council (NERC). FERC would be given the authority to

²“Slamming” is the practice of changing a customer’s service provider without that customer’s knowledge. “Cramming” is the practice of billing a customer for unauthorized or fictitious service.

approve and oversee an organization that will prescribe and enforce mandatory electric reliability standards. FERC would review all mandatory reliability standards developed by the organization to ensure that they are in the public interest and reflect an appropriate level of reliability.

It is also essential that both states and the Federal government develop tools to minimize both the occurrence and impact of power outages. DOE has traditionally been relied on to evaluate power system failures and develop recommended actions to minimize recurrences. However, without a dedicated in-house capability, it would be difficult for DOE to carry out this function in an increasingly complex competitive market. As a result, we are proposing that an independent Electricity Outage Investigation Board be created to investigate major incidents and report its findings to DOE to prevent future outages.

In addition, we are proposing to approve interstate compacts for regional transmission planning among the states. Such compacts will enable states to address transmission capacity issues to avoid power outages.

Renewable Energy

Retail competition has the potential to increase the amount of renewable energy generated because it will allow environmentally-conscious consumers to purchase “green” energy packages from suppliers. However, the inherent uncertainty of the transition to competition, the recognition of important environmental and energy diversification benefits from renewables, and the fact that existing Public Utility Regulatory Policies Act (PURPA)³ requirements related to renewable energy are incompatible with competition suggests that Federal policy towards

³PURPA requires utilities to purchase the electricity generated at certain renewable and cogeneration facilities at the utilities’ avoided cost. CECA proposes to repeal the “must buy”

renewable energy should be revisited in the context of restructuring.

CECA would establish a Federal Renewable Portfolio Standard (RPS) that requires all electricity sellers to cover 7.5% of their electricity sales with generation from non-hydroelectric renewable sources such as wind, solar, biomass or geothermal energy by 2010. Retail sellers could meet the proposed RPS requirement by generating sufficient renewable electricity or by purchasing tradeable renewable electricity credits from those sellers that exceed the RPS requirement, or by some combination of these strategies. The RPS would also provide for double credits for non-hydroelectric renewable power generated on Indian lands.

To hold program costs down, the Administration's proposal would allow electricity sellers to purchase credits from the Department of Energy at a cost of 1.5 cents/kwh. As a result, sellers would not be forced to pay excessive amounts for credits that are sold by other electricity providers that exceed the 7.5% RPS requirement.

The Renewable Portfolio Standard – together with the Public Benefits Fund, provisions regarding the use of combined heat and power and distributed power technologies, and consumer information about generation source and emissions characteristics – make up an important package of environmental provisions. This comprehensive group of measures will ensure that the economic benefits of restructuring are achieved in a manner that also benefits the environment.

Public Benefits

The Administration is concerned that retail competition could lead to reduced support for

provision of that Act, prospectively.

electricity-related programs that provide important public benefits. Under cost-of-service regulation, programs supporting and promoting renewable generation, energy efficiency and low-income assistance were supported in part through utility rate structures, and utilities recovered the costs of approved programs within their monopoly service area as a part of the overall cost of service. In a competitive environment, utilities may be unwilling to include in their rates the cost of programs not included in the rates of their competitors.

We support the creation of a public benefits fund (PBF) to provide matching funds to States for low-income assistance, energy efficiency programs, consumer education and the development and demonstration of emerging technologies, particularly renewables. The PBF would be funded through a generation or transmission interconnection fee on all electricity capped at 1 mill per kwh. No more than \$3 billion annually could be provided to the states for these programs.

Rural and Remote Areas

While our analysis concludes that rural America will benefit from electric restructuring, we recognize that some have expressed concerns about the impact of competition on rural areas. As a result, the Administration has proposed that a “rural safety net” be available should expectations associated with competition not be realized. Under the safety net provision, a national wires charge of up to .17 mills per kwh would be available to generate funds if the Secretary of Energy determines that competition has adversely impacted rural consumers.

The Administration’s Comprehensive Electricity Competition proposal is projected to provide significant benefits to electricity consumers connected to the three major power grids that serve the continental United States by accelerating the transition to competitive electricity

markets. However, the situation of remote communities that may not be connected to the major power grids or that have transmission constraints merits particular attention. These communities, which may not have access to competing suppliers, also face high costs which can pose a significant barrier to economic development. The Administration bill would authorize grants programs for persons living in remote communities and Indian tribal land to address their electricity needs.

Federal Utilities

Three of the four remaining Federal Power Marketing Administrations⁴ – Bonneville Power Administration (BPA or Bonneville); the Western Area Power Administration (WAPA); and the Southwestern Power Administration (SWPA) – own transmission lines in the regions they serve. In fact, Bonneville is the major transmission owner and operator in the Pacific Northwest; with over 75% of the region's high voltage transmission capacity, with major links to Canada and other regions of the United States.

As I discussed earlier, we believe it is important that FERC's open access authority extend to transmission facilities owned by the PMAs. We also believe it is essential to the proper development of competitive markets that Federal transmission facilities be subjected to other regulatory requirements in a manner similar to those of other utilities. Therefore, CECA proposes to subject PMA transmission facilities to Federal Power Act regulation. Our legislation does, however, recognize that the unique obligations of the PMAs require slightly different

⁴The Southeastern Power Administration (SEPA) does not own transmission facilities and, therefore, is not subject to the provisions of CECA.

regulatory treatment than that accorded other utilities. For instance, FERC, in setting transmission rates for the PMAs, would be required to ensure that amounts collected are sufficient to cover costs so that the PMAs can repay what they owe the Treasury. In addition, our proposal would allow FERC to allow the PMAs to impose transmission surcharges in limited instances in order to pay for certain other costs, such as fish and wildlife remediation.

CECA would also subject The Tennessee Valley Authority's (TVA's) transmission facilities to Federal Power Act jurisdiction. However, Federal legislation needs to go further in order to enable competition to occur in the Tennessee Valley.

TVA supplies power to 159 retail distributors in a region including almost all of Tennessee and parts of six surrounding states. TVA also sells directly to 67 large industrial and Federal customers. Due to statutory and contractual restrictions, TVA is essentially the sole power supplier in the TVA region, and may only sell power elsewhere under very limited circumstances.

The Administration's bill would authorize competing utilities to sell power into the Tennessee Valley beginning January 1, 2003 and require TVA to renegotiate its contracts with existing customers on several matters, including the ability to purchase power from others after 2002. At the same time, TVA would be permitted, for the first time, to sell wholesale power outside of the Tennessee Valley in order to mitigate its stranded costs.

Efficient Distributed Power and Combined Heat and Power

The Administration believes that retail competition will spur the development of efficient distributed power (DP) and combined heat and power (CHP) technologies that will make our electric system more cost effective, reliable and environmentally friendly. However, there are

currently certain statutory and regulatory barriers that act to impede the effective deployment of these technologies. Given the significant benefits associated with DP and CHP technologies, we have proposed actions to reduce these barriers.

For example, interconnection standards vary widely from utility to utility, thereby discouraging widespread use of distributed generation. CECA proposes to establish and implement national, uniform, and non-discriminatory technical interconnection standards to facilitate the hookup of distributed power generation systems to distribution utilities.

In addition, we are concerned that present tax code treatment of DP technologies may have the effect of discouraging their use in many types of applications. We are proposing to amend the tax code to clarify that the depreciation schedule for all DP equipment is 15 years. We are also proposing to establish an 8 percent investment tax credit for qualified CHP systems placed in service in calendar years 2000 through 2002.

Municipal Tax-Exempt Debt

We fully expect that public power systems will participate in restructured environments that allow competing, private generators of electricity to sell to customers who formerly had no option but to be supplied by those public systems. Currently, municipal utilities may finance their capital expenditures through the use of tax-exempt debt. The tax-exempt status of the debt would be jeopardized if a municipal utility participates in a competitive market. We believe that efficient, competitive markets depend upon leveling the playing field with respect to capital costs. At the same time, it is important that the tax-exempt status of debt previously issued by public power systems for existing facilities not be put in jeopardy if a municipal utility engages in competition.

Accordingly, the Administration is recommending that existing facilities financed with outstanding tax-exempt bonds should be free from the tax code's limitation, but that new generation and transmission facilities should be ineligible for tax-exempt bond financing. Municipal utilities would still be able to finance new distribution facilities with tax-exempt debt.

Conclusion

When we released the Administration's bill on April 15, several cabinet officials and three members of this Subcommittee (Congressmen Markey, Largent and Burr) and I were joined on a stage by more than 20 people representing a diverse set of interests, including investor-owned utilities, municipal utilities, consumer groups, power marketers and independent power producers. While they did not necessarily all agree on the Administration bill, or any other single approach, their message was loud and clear – the time for Federal legislation is now.

Mr. Chairman, we are pleased that the Subcommittee on Energy and Power is holding hearings on electric restructuring. The Administration believes that Federal restructuring legislation is needed sooner, rather than later, and we want to work with you and the members of the Commerce Committee and staff, on a bipartisan basis, to get the job done. I would be glad to answer any questions which you or the other Committee members may have.